

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5669 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

=====

1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No

2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?  
No

-----  
DHANUBEN WD/O KESHAVBHAI NAROTTAMBHAI PATEL

Versus

STATE OF GUJARAT

-----  
Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR. S.P.DAVE, LD. GOVT. PLEADER FOR RESPONDENTS NO.1  
& 2.

Rest served.

-----  
CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 21/01/97

ORAL JUDGEMENT

The present Petition brings in challenge the  
orders passed by Deputy Secretary, Revenue Department,

State of Gujarat, pronounced while exercising the jurisdiction under Section 34 of Urban Land (Ceiling & Regulation) Act, 1976. Under this orders, the earlier orders passed by the Competent Authority, Surat, on July 19, 1990 came to be revised.

One Keshavbhai Narottambhai Patel (since deceased), a resident of Umra under the Surat District had filled in the necessary form under Section 6 (1) of the ULC Act, 1976. The holder had shown 56363.82 sq. meters of land in his holding. On the basis of the material presented before it, the Competent Authority had ultimately come to the conclusion that the total holding which was required to be taken into consideration was 5643.43 sq. meters only. The Competent Authority was of the opinion that, four units were required to be given. This four units were upon a notional partition between deceased Keshavbhai and his three sons. On this calculation it appeared that, each of the three sons was getting 1410.86 sq. meters of land. This would be of course below the standard area. Any how, father Keshavbhai had died on June 21, 1988, leaving behind him seven heirs & legal representatives, including widow Dhanuben and three daughters, namely Smt. Pushpaben, Sudhaben and Madhuben. According to Competent Authority, the unit of the deceased father Keshavbhai was required to be divided in three equal shares going to three sons. On the basis of this calculation, it was the opinion of the Competent Authority that, each of the three sons would be having the total area admeasuring 1612.41 sq. meters. Once again the Competent Authority had taken the view that, there would be an excess of 112.41 sq. meters but when the benefit is given to each of the three sons of 10 % margin rule, nothing was required to be declared as the excess vacant land. This orders dated July 19, 1990 were sought to be taken into suo motu revision under Section 34 of the ULC Act, 1976. The necessary orders in this respect which is available at Annexure-C came to be issued on April 18, 1992. In the suo motu revision proceedings, the view has been taken that, the total land which required the consideration was admeasuring 6418.80sq. meters. The Deputy Secretary had taken the view that, deceased Keshavbhai had died on June 21, 1988 and that his holding was required to be again sub-divided and on that calculation an area admeasuring 999 sq. meters was required to be declared as excess vacant land. These orders are in challenge before me.

Learned counsel Mr. Pahuwa who appears on behalf of the petitioner urges that, the view taken by the Deputy Secretary in suo motu revision proceedings is bad

in law for a double reason. According to the learned counsel, reasonable opportunity of being heard was not given to all the persons who are interested in the holding. The second contention coming from learned counsel for the petitioner is that, the calculation made by the Deputy Secretary appears to be erroneous and incorrect, both factually as well as legally. Learned counsel urges that, after the death of deceased Keshavbhai, the unit going to him could not have been sub divided amongst three sons because under a Will deceased Keshavbhai bequeathed his entire properties to his widow Dhanuben. The second contention coming from learned counsel Mr.Pahuwa is that, in fact not only four but five units were required to be given because widow was also entitled to a separate unit. Concentrating upon the second contention, learned counsel Mr. Pahuwa places reliance upon a decision of this Court in Dharmadas Babubahi Kansara and others, Petitioners Vs. Additional Special Secretary (Disputes), Revenue Department, Govt. of Gujarat and Another, 1994 (1) GLH pg. 276. In this decision a view has been taken that the father, mother, major sons and daughters constitute undivided Hindu family, each entitled to a separate unit.

It appears very clearly that the orders of the Competent Authority under which only four units were recognised were not taken in the appeal. But it also should not be over looked that, the State had passed two revision orders under the suo motu revision powers under the Act of 1976. When this exercise was being done all the aspects either going in favour of the holders or going against them were required to be considered and decided, so that ultimately a just conclusion could be arrived at. It appears that while doing the revisional exercise this has not been done. Therefore the matter requires to be remanded to the Deputy Secretary who had exercised the revisional jurisdiction, with a direction to decide the matter afresh, after affording a reasonable opportunity of being heard to the petitioner and all other persons interested in the lands. The question to be decided firstly would be, as to whether Dhanuben as a member of the Hindu undivided family was entitled to a separate unit. The second question to be decided is, as to whether the deceased Keshavbhai has left behind him a valid Will bequeathing everything belonging to him, including his share in the holding to his widow Dhanuben. These two questions should be decided by the learned Deputy Secretary, after affording a reasonable opportunity of being heard to the persons as indicated above, and also the opportunity of adducing evidence regarding the discriminatory disposition by deceased

Keshavbhai. This should be done within a period of four months from the date of receipt of the write of the present orders. Rule is made absolute accordingly.

-----